

13

ORIGINAL

Exhibits

A, B, C

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

ALLSTATE INSURANCE COMPANY,  
as Subrogee of Lisa Knighton,

Plaintiff,

v.

HAMILTON BEACH/PROCTOR-SILEX, INC.  
a Delaware Corporation,

Defendant,

Docket No. 05-CV60052  
Hon. Marianne O. Battani

U.S. DIST. COURT  
EAST DIST. MICH.  
DETROIT, MICH.

05 JUL 22 AM 11:33

FILED

GROTEFELD & DENENBERG, L.L.C.  
Matthew L. Friedman (P46260)  
Alan B. McMaster (P53638)  
Attorneys for Plaintiff  
30800 Telegraph Road, Ste. 3858  
Bingham Farms, MI 48025  
(248) 727-7100

THE MAZZARA LAW FIRM, PLLC  
Jack J. Mazzara (P29472)  
Lanalee C. Farmer (P65758)  
Attorneys for Defendant  
19257 Mack Avenue  
Grosse Pointe Woods, MI 48236  
(313) 343-5200

**PLAINTIFF'S MOTION FOR RULE 11 SANCTIONS**

NOW COMES Plaintiff Allstate Insurance Company ("Allstate"), by and through its attorneys, Grotefeld & Denenberg, L.L.C., for its Motion for Rule 11(c) Sanctions states:

1. Defendant has filed a Motion for Summary Judgment in this matter claiming that this matter should be dismissed based upon the fact that there was improper service of process thereby allowing the Statute of Limitations to run.

2. This matter has been ongoing since the fire occurred at Plaintiff's insured's home on March 23, 2002.

3. Shortly after the fire, Plaintiff placed Defendant on notice of a potential claim and invited Defendant to participate in an inspection of the toaster.

4. Attached as Exhibit A, is a copy of correspondence whereby Defendant directed Plaintiff's Attorneys Office to ensure that all legal communications be sent to their law department at 4421 Waterfront Drive, Glen Allen, Virginia 23060.

5. Plaintiff has complied with Defendant's request and sent all legal communications to the address as specified by the Defendant.

6. As is more fully described in Plaintiff's Response to Defendant's Motion for Summary Judgment, this matter is in litigation and has been equally litigated by both Plaintiff and Defendant up and until the filing of this frivolous Motion for Summary Judgment by Defendant.

7. MCR 2.105(J)(3) specifically states "An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service."

8. In fact, "if a defendant actually receives a copy of the summons and complaint within the permitted time, he cannot have the action dismissed on the ground that the manner of service contravenes the rules." *Hill v. Frawley*, 155 Mich. App. 611, 613 (1986); *Wright v. Micro Electronics, Inc.*, (unpublished) 2005 WL 1540488 (Mich. App., June 30, 2005) (See Exhibit B, Unpublished Case).

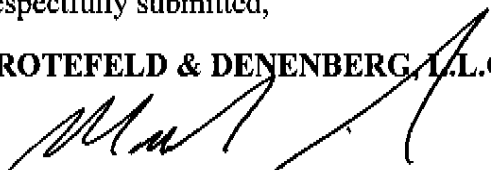
9. It is Plaintiff's position that this Motion is not only frivolous, but not warranted by the existing case law and Court Rules.

10. Attached as Exhibit C, is a copy of the correspondence whereby Plaintiff requested that Defendant voluntarily dismiss their Motion. To date Plaintiff has received no response to this request.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant Plaintiff's Motion for Sanctions and provide costs and attorneys fees pursuant to F.R.C.P. Rule 11.

Respectfully submitted,

**GROTEFELD & DENENBERG, L.L.C.**



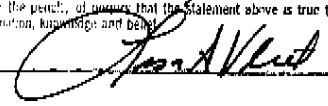
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ALAN B. MCMASTER (P53638)  
Attorneys for Plaintiff  
30800 Telegraph Road  
Suite 3858  
Bingham Farms, Michigan 48025  
(248) 727-7100

Dated: July 21, 2005  
111045

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above by making the same to them at their respective business addresses as disclosed by the pleadings of record herein, with postage fully prepaid thereon on the 21st day of July, 2005. I declare under the penalty of perjury that the statement above is true to the best of my information, knowledge and belief.



---

A

Shawn R. Urellius • Assistant General Counsel

HAMILTON BEACH ♦ PROCTOR-SILEX, INC.

VIA FACSIMILE (248) 593-5808

April 25, 2002

**CONFIRMATION  
COPY**

Alan B. McMaster, Esq.  
Grotefeld & Denenberg, LLC  
30800 Telegraph Road, Suite 3858  
Bingham Farms, MI 48025

Dear Mr. McMaster:

Your letter of April 16, 2002, was incorrectly addressed and not received by our office until this morning. Please ensure that all legal communications to Hamilton Beach/Proctor-Silex, Inc. ("HB/PS") be sent to the Law Department at 4421 Waterfront Drive, Glen Allen, Virginia 23060.

As I indicated in my voicemail messages to you and your paralegal, Kelly Marsh, HB/PS does want to examine the fire scene. Your letter indicated that the fire scene would be destroyed on April 22, 2002. I assume that this is a typographical error since this date is prior to the date we received your letter. **Please return my calls as soon as possible so that we can make arrangements to send someone to examine the fire scene before it is destroyed.**


Please also provide us with any information you have regarding the model number, age, series code, etc. of the HB/PS toaster you believe may have been in the area of origin of the fire.

Please note that HB/PS, and all other potential parties, will need to examine the fire scene and all potential fire sources located within the area of origin, including those potential sources that you or your expert eliminate as causes of the fire. Please ensure that all potential evidence is maintained in its original post-fire condition pursuant to NFPA 921.

Again, it is critical that HB/PS, and all other potential parties, be given an opportunity to examine the fire scene and all other potential evidence. Please call me as soon as possible to discuss this matter.

I look forward to hearing from you.

Sincerely yours,



Shawn R. Urellius

SRU/ajn

B

Westlaw.

Not Reported in N.W.2d

Page 1

2005 WL 1540488 (Mich.App.)

(Cite as: 2005 WL 1540488 (Mich.App.))

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT  
RULES BEFORE CITING.Court of Appeals of Michigan.  
Willie WRIGHT, Plaintiff-Appellant,  
v.MICRO ELECTRONICS, INC.,  
Defendant-Appellee,  
andTony NUNEZ and Frank Angelucci, Defendants.  
No. 252790.

June 30, 2005.

Before: O'CONNELL, P.J., and SCHUETTE and  
BORRELLO, JJ.

[UNPUBLISHED]

PER CURIAM.

\*1 Plaintiff failed to serve defendant, Micro Electronics, Inc., in accordance with the court rules, but sent a copy of the summons and complaint to the attorney representing defendant in a related federal action brought by plaintiff. The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(3) (service of process was insufficient). Plaintiff appeals as of right, asserting that dismissal was improper pursuant to MCR 2.105(J)(3). Defendant contends that this case involved a complete failure of service and, therefore, MCR 2.105(J)(3) is inapplicable. We disagree and reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

We review the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law. *Maiden v. Rozwood*, 461 Mich. 109, 118; 597

NW2d 817 (1999).

MCR 2.105(J)(3) provides that "[a]n action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service." The principal dispute between the parties is whether this case involved "improper service of process" or a complete failure of service of process. The importance of the distinction is discussed in *Holliday v. Townley*, 189 Mich.App 424; 473 NW2d 733 (1991).

In *Holliday*, the plaintiff filed a complaint and sent a copy to the defendant with a cover letter threatening to "formally serve the papers" if the defendant did not provide the plaintiff with dental records that she requested. The defendant was never served with or received a summons. The summons expired, and the limitation period expired. The trial court dismissed the action for failure to serve the defendant. On appeal, the plaintiff relied on MCR 2.105(J)(3) and argued that the defendant had actual notice of the lawsuit. This Court concluded that MCR 2.105(J)(3) was inapplicable "where the question is not one of defects in the manner of service, but rather a complete failure of service of process." *Id.* at 425. The Court stated that the rule "forgives errors in the manner or content of service of process." *Id.* at 426. The summons is a necessary part of service of process. "MCR 2.105(J)(3), as well as every other court rule governing service of process, assumes that the summons will be served with the complaint, even if in a technically defective fashion." *Id.* The Court in *Holliday* concluded that there was a complete failure of service of process and, therefore, affirmed the dismissal of the action.

In contrast to *Holliday*, both *Hill v. Frawley*, 155 Mich.App 611; 400 NW2d 328 (1986), and *Bunner v. Blow-Rite Insulation Co.*, 162 Mich.App 669, 674; 413 NW2d 474 (1987), are examples of errors in

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2005 WL 1540488 (Mich.App.)

(Cite as: 2005 WL 1540488 (Mich.App.))

the manner of service to which MCR 2.105(J)(3) applies.

In *Hill*, the plaintiff filed a complaint and attempted to serve it by certified mail, but did not enclose a copy of the complaint. He made a second attempt to serve the defendant, but someone other than the defendant signed the return receipt. The defendant filed a motion for summary disposition on the basis that process and service were insufficient. The motion was filed before the summons expired. Although the service did not comply with MCR 2.105(A)(2), this Court relied on MCR 2.105(J)(3) to conclude that the defendant was not entitled to summary disposition. "[I]f a defendant actually receives a copy of the summons and complaint within the permitted time, he cannot have the action dismissed on the ground that the manner of service contravenes the rules." *Id.* at 613. In *Hill*, the defendant acknowledged receiving the summons and complaint within the pertinent time period by retaining counsel and filing a motion for summary disposition. *Id.* at 613- 614.

\*2 In *Bunner*, the plaintiffs filed an action against a defendant ("Rapco") that was involved in bankruptcy proceedings and had ceased to do business. The plaintiffs served Rapco's bankruptcy trustee, who forwarded the summons and complaint to an insurance company, and counsel was hired to represent Rapco. The trial court granted Rapco's motion to quash and dismissed the case. This Court explained that it was not clear whether the plaintiffs had complied with all requirements for proper service on Rapco. However, dismissal was improper pursuant to MCR 2.105(J)(3). The Court stated:

While the exact nature of Rapco's current existence is somewhat unclear, it is clear in this case that Rapco is aware of the pending action. Service on the trustee is undisputed. At the hearing on the motion to quash, Robert Roth stated that he was appearing on behalf of Rapco, not an insurance company. Accordingly, the trial court erred in quashing service and dismissing Rapco when Rapco was fully aware of the pending action despite any errors in the manner of service. [*Id.* at 674.]

We conclude that the present case involves an error in the manner of service rather than a complete failure of service, as in *Holliday*. The summons and complaint were sent to defendant's attorney rather than served on defendant as specified in the court rule. We disagree with defendant's position that failure to serve an entity in compliance with MCR 2.105 means that there is a "complete failure of service" to which MCR 2.105(J)(3) does not apply. This interpretation is not suggested by the holding in *Holliday*, where the crucial defect was the failure to send a summons in the first instance. Nor is it consistent with the holdings in *Hill* and *Bunner*, *supra*.

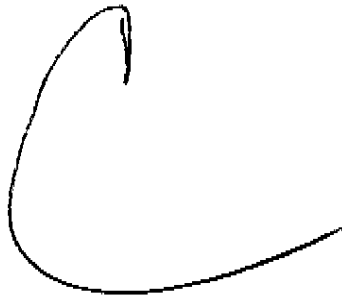
The evidence submitted to the trial court indicates that counsel for plaintiff and defendant discussed the state court action and defense counsel received a copy of the summons and complaint before the summons expired. This is adequate to show that the service informed defendant of the action. Indeed, defendant does not argue to the contrary. Accordingly, dismissal of plaintiff's action was improper pursuant to MCR 2.105(J)(3).

Reversed.

2005 WL 1540488 (Mich.App.)

END OF DOCUMENT



A handwritten capital letter 'C' in black ink, centered on the page. The letter is formed by a single continuous stroke, starting from the top, curving down and to the left, then around to the right and back up to the top.

**ROTEFELD  
& DENENBERG, LLC**

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**Matthew L. Friedman**  
Direct Dial: (248) 727-7125  
Email [mlf@gd-llc.com](mailto:mlf@gd-llc.com)

July 19, 2005

**Via Facsimile and Regular Mail**

Mr. Jack J. Mazzara, Esq.  
The Mazzara Law Firm  
2301 W Big Beaver Ste 621  
Troy, MI 48084-3329

**Re: Allstate/Knighton vs. Hamilton Beach/Proctor-Silex**  
**Our file no: 9.5410**

Dear Mr. Mazzara:

We are in receipt of and have recently prepared a Response to your Motion for Summary Judgment. The basis for your Motion is lack of proper service. When we first received this Motion we were in fact dumbfounded as to how and why you would be bringing such a Motion based on improper service.

As you know, after the fire occurred, Allstate placed our client on notice of a potential claim and invited you to participate in an inspection. On April 25, 2002, in response to our notice letter, your client directed us to send "all legal communications" to 4421 Waterfront Drive, Glen Allen, Virginia 23060. After that date, due to the parties being unable to agree on an inspection site, Allstate served a Complaint for Declaratory Relief on Defendant at the address listed above, and after participating in the Declaratory Action, Allstate voluntarily dismissed the Complaint once the issue was resolved. After failing to agree as to the cause of the fire, Allstate filed and served the Complaint in State in Wayne County Circuit Court. Once again, Allstate served the Summons and Complaint where your client directed all legal communication to be sent, specifically at 4421 Waterfront Drive, Glen Allen, Virginia 23060. Defendant not only received the Complaint, but filed an Answer and then filed a removal to Federal Court. Since the removal to Federal Court, the Complaint was answered and discovery has been initiated.

MCR 2.105(J)(3) specifically states, "An action shall not be dismissed for improper service of process unless the service failed to inform the Defendant of the action within the time frame provided in these rules for service." In fact, "if the Defendant actually receives a copy of the Summons and Complaint within the permitted time, he cannot have the action dismissed on the ground that the manner of service contravenes the rule." *Hill v Frawley*, 155 Mich. App. 611, 613 (1986). Also F.R.C.P. Rule 11(b)(2) states that by filing a pleading with the Court, a party confirms the pleading is warranted by existing laws.

**Grotefeld & Denenberg, LLC**

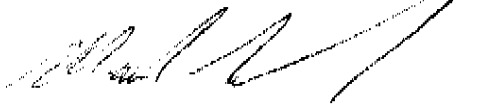
July 19, 2005

Page 2

Based on all of the above, we respectfully request that you withdraw what we determine to be your frivolous Motion for Summary Judgment. Your failure to voluntarily withdraw this motion will result in our filing a Motion for Sanctions pursuant to the Federal Rules of Civil Procedure, Rule 11. Please contact us by Thursday, July 21, or we will proceed accordingly.

Very truly yours,

**GROTEFELD & DENENBERG, L.L.C.**

A handwritten signature in black ink, appearing to read 'Matthew L. Friedman', is written over a horizontal line.

Matthew L. Friedman

MLF/lav  
110927

ORIGINAL

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

ALLSTATE INSURANCE COMPANY,  
as Subrogee of Lisa Knighton,

Plaintiff,

v.

HAMILTON BEACH/PROCTOR-SILEX, INC.  
a Delaware Corporation,

Defendant,

Docket No. 05-CV60052  
Hon. Marianne O. Battani

U.S. DIST. COURT OF  
EAST DIST. MICH.  
DETROIT, MICH.

05 JUL 22 AM 11:35

FILED

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Attorneys for Defendant  
19257 Mack Avenue  
Grosse Pointe Woods, MI 48236  
(313) 343-5200

**PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR RULE 11(c) SANCTIONS**

Plaintiff relies on F.R.C.P. Rule 11 and the facts as set forth in their Motion in Response to Defendant's Motion for Summary Judgment and supporting Brief.

Respectfully submitted,

GROTEFELD & DENENBERG, L.L.C.

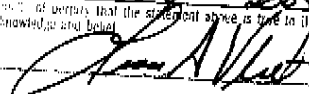
  
MATTHEW L. FRIEDMAN (46260)  
ALAN B. MCMASTER (P53638)  
Attorneys for Plaintiff

Dated: July 21, 2005

111045

**PROOF OF SERVICE**

I, the undersigned, declare that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above by mailing the same to them at their respective business addresses as disclosed by the last time of record herein, with postage fully prepaid thereon, on this 22nd day of July, 2005. I declare under the penalty of perjury that the statement above is true to the best of my information, knowledge and belief.



UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

ALLSTATE INSURANCE COMPANY,  
as Subrogee of Lisa Knighton,

Plaintiff,

v.

HAMILTON BEACH/PROCTOR-SILEX, INC.  
a Delaware Corporation,

Defendant,

Docket No. 05-CV60052  
Hon. Marianne O. Battani

FILED  
05 JUL 22 AM 11:53  
U.S. DIST. COURT  
EAST DIST. MI  
DETROIT 48226

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(313) 343-5200

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that Plaintiff's Motion for Rule 11 Sanctions will be brought on for hearing in the U.S. District Court, in front of The Honorable Marianne O. Battani, on September 7, 2005 at 2:00 p.m.

Respectfully submitted,

**GROTEFELD & DENENBERG, L.L.C.**

By: 

MATTHEW L. FRIEDMAN (P46260)  
Attorneys for Plaintiff

Dated: July 22, 2005  
111064